



ATTORNEY GENERAL OF NEBRASKA
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ATTORNEY GENERAL OF MISSOURI
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November 2, 2022

VIA CM/ECF

Michael E. Gans
Clerk of Court
U.S. Court of Appeals for the Eighth Circuit
Thomas F. Eagleton Federal Courthouse
111 South 10th Street
St. Louis, MO 63102

RE: *State of Nebraska, et al., v. Biden, et al.*, No. 22-3179
Response to Rule 28(j) Letter

Dear Mr. Gans:

Yesterday, the Department cited Fed. R. App. P. 28(j) as justification to submit a letter that MOHELA recently sent to U.S. Representative Cori Bush.

Far from supporting the Department, the MOHELA letter affirms key facts that establish Missouri's standing. First, MOHELA "is a public instrumentality of the State of Missouri." MOHELA Ltr. 1. Second, because MOHELA is a "non-profit" "governmental entity," "[a]ny available funds above its operating needs and reasonable reserves are devoted by MOHELA to student financial aid." *Id.* See also *id.* at 2 (reiterating those facts). This squarely supports the States' argument that harming MOHELA's finances reduces money that MOHELA uses to originate loans for Missouri students, fund financial aid programs of the Missouri Department of Higher Education and Workforce Development, and contribute to Missouri's Lewis and Clark Discovery Fund. See Mot. Inj. 8–10; Reply 2. Because Missouri has declared that MOHELA's support for higher education in the State furthers an "essential public function," Mo. Rev. Stat. §173.360, this undeniably harms the

State. Third, the MOHELA letter tacitly accepts that MOHELA's revenue is a function of the loans it services, MOHELA Ltr. 2, as the States have said, Mot. Inj. 9.

The Department's Rule 28(j) filing is also improper. It does not attach legal "authorit[y]" supporting the Department's arguments, Fed. R. App. P. 28(j), but attempts to supplement the record with a letter reciting known or irrelevant facts. For example, that MOHELA does not "make profits," 28(j) Ltr. 1, is clear from Missouri law, *see* Mo. Rev. Stat. §173.385.1(16)–(17), and that the Missouri Attorney General sent sunshine requests to MOHELA, 28(j) Ltr. 1, was mentioned by the district court, R. Doc. 44, at 13. Other facts about communications or agreements between MOHELA and the Missouri Attorney General—even if unknown to the Department beforehand—are irrelevant because those facts do not change the harm to state interests that Missouri has established, *see* Mot. Inj. 8–10; Reply 2–3, or the state law permitting the Missouri Attorney General to vindicate those interests in the name of the State, Mo. Rev. Stat. §27.060.

Sincerely,

/s/ Michael E. Talent

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cc: Counsel for Appellees (via electronic filing)

CERTIFICATE OF COMPLIANCE

I certify that the body of this letter contains 346 words as determined by the word-count feature of Microsoft Word and that this letter has been scanned for viruses and is virus-free.

/s/ James A. Campbell
James A. Campbell

CERTIFICATE OF SERVICE

I certify that on November 2, 2022, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will serve all counsel of record.

/s/ James A. Campbell
James A. Campbell